IN THE CIRCUIT COURT

OF OHIO COUNTY, WEST VIRGINIA

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CHRISTA J. BLANKENSHIP, et al. :

Plaintiff, : Civil Action

vs. : Number

PHILIP MORRIS INCORPORATED, et al. : 97-C-204

Defendant. :

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DEPOSITION OF SAMUEL V. SPAGNOLO, M.D.

Washington, D.C.

Thursday, April 27, 2000

REPORTED BY:

VICTORIA L. WILSON

Deposition of SAMUEL V. SPAGNOLO, called for examination pursuant to notice of deposition, on Thursday, April 27, 2000, in Washington, DC at the offices of Shook, Hardy & Bacon, 600 14th Street NW, at 10:10 a.m. before Vicky Wilson, a Notary Public within and for the District of Columbia, when were present on behalf of the respective parties:

ANN RITTER, ESQ. (via telephone)
Ness Motley Loadholt Richardson & Poole
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843-216-9000
On behalf of Plaintiff

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Thompson Coburn LLP
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314-552-6000
On behalf of Defendant Lorillard Tobacco

-- Continued --

APPEARANCES: (Continued)

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PROCEEDINGS

Whereupon,

SAMUEL V. SPAGNOLO, M.D.

was called as a witness and, having first been duly sworn, was examined and testified as follows:

MR. ROWLEY: Ann, as I just mentioned to you before we went on the record, I wanted to give you notice of three typographical errors that are in Dr. Spagnolo's report. The first, which you were already aware of before today, is on page 2, in the second line of the first full paragraph, the word "symptomatic" should have an "A" before it; it should be "asymptomatic."

Then on page 3, two words were left out of a quotation on page 3. This is one, two, three, four, five lines from the bottom of the first full paragraph. The quote starts, "No organization" -- I'm sorry -- "No organizations recommend." The actual quote is, "No organizations currently recommend." The word "currently" was mistakenly omitted. And then the rest of the quote is, "routine screening of either the general population or smokers." It should be, "or of smokers"; so the word "of" was mistakenly omitted.

And that's all I had, Ann. Go ahead and

proceed as you want.

EXAMINATION

BY MS. RITTER:

Q. Dr. Spagnolo, this is Ann Ritter. I'm going to be asking you questions on behalf of the Plaintiff in this class action. If you need to interrupt me to get me to repeat a question, you sort of have to wait until I take a breath because of the way these speaker phones work, so don't hesitate to try to interrupt me but don't be surprised when I am talking. It doesn't allow me to hear what you are saying.

A. Okay.

Q. I received, Dr. Spagnolo, a letter dated April 24th from an Adam Miller providing me some materials that apparently are your reliance materials in this case, in addition to anything else that was referenced in your report. Were you aware that I had been provided about a two-inch, three-inch stack of materials?

A. Yes, I was told you were provided those materials.

Q. Do you have those with you today?

A. No, I do not.

Q. What do those materials actually represent?

A. Well, those materials are materials that I looked at and used in order to formulate my expert witness disclosure opinion.

Q. Are they materials that you selected?

A. Some of them were.

Q. And are they materials that you find reliable and authoritative for the purpose of giving your opinion in this case?

MR. ROWLEY: Let me object to the form, "reliable and authoritative," vague.

You may answer.

THE WITNESS: Well, they were materials that are found in the literature. Some of those materials are put in there so that you can receive opinions from various groups. Some of the articles and materials in there are review articles, some of them are actually well-designed studies, so they all carry somewhat different weight but it is a general overview of the literature so that you can look at all sides of an issue.

BY MS. RITTER:

Q. One of the articles that was included as an article by Padgett and Tanaka, are you familiar with that article?

A. If it is in that list, I'm sure that I have

read it. I don't have that in front of me, that article.

Q. And do you have with you a copy of the large book that you were relying on which was the report of the U.S. Preventive Services Task Force?

A. Yes.

Q. If you could turn to -- what is that number, XLI? That's a Roman numeral number in the preface. I was never very good with Roman numbers. Are you there?

A. Yes. I think so. Under the methodology?

Q. Right. And could you look at the middle paragraph on that page and read that for the record?

A. You are talking about the paragraph that starts with, "The second criterion"?

Q. Right.

A. Would you like me to read that whole paragraph?

Q. Yes, I would.

A. Okay. "The second criterion for selecting preventive services for review was that the maneuver had to be performed in the clinical setting. Only those preventive services that would be carried out by clinicians in the context of routine health care were examined. Findings should not be extrapolated

to preventive interventions performed in other settings. Screening tests are evaluated in terms of their effectiveness when performed during the clinical encounter (i.e., case finding. Screening tests performed solely at schools, work sites, health fares and other community locations are generally outside the scope of this report. Also, preventive interventions implemented outside the clinical setting, for example, health and safety legislation, mandatory screening, community health promotion) are not specifically evaluated. Although clinicians can play an important role in promoting such programs and encouraging the participation of their patients, references to these types of interventions are made occasionally in sections of this book."

Q. Okay. Now, here's my question, Dr. Spagnolo: Do you have any reason to believe that the statements contained in this paragraph inaccurately describe the scope of the review that was conducted in connection with the U.S. Preventive Services Task Force?

MR. ROWLEY: Let me object to the form as compound, in that the quotation that the witness just read contains what are likely to be dozens of statements.

Subject to that, you may answer.

THE WITNESS: Well, I'm a little confused by your question because there is so much in that paragraph, it is difficult to formulate an answer to that question.

BY MS. RITTER:

Q. Okay. Well, then, I'm happy, Dr. Spagnolo, to go sentence by sentence. Do you have any reason to believe that the task force examined preventive services that were not carried out by clinicians in the context of routine health care?

A. Would you state that one more time because that, to me, was a little confusing?

MS. RITTER: The court reporter could read the question.

(The reporter read the record as requested.)

THE WITNESS: Well, only based on what they say and that is references to interventions are made occasionally in sections of this book, so my answer would be I'm not -- I have no reason to believe that but I can't go beyond what they have stated here.

BY MS. RITTER:

Q. Do you disagree with the author of this preface of the methodology overview of this study, would you disagree with their statement that the

findings of the study should not be extrapolated to preventive interventions performed in other settings?

A. I don't think that's what they are saying, at least that's not my impression.

Q. Well, what do you think they are saying in that sentence? The sentence that I am talking about is in quotes; "Findings should not be extrapolated to preventive interventions performed in other settings," unquote.

MR. ROWLEY: Let me object to the form.

Go ahead.

THE WITNESS: I can't tell you what they are trying to say in that sentence.

BY MS. RITTER:

Q. Had you ever read that sentence before today?

A. Well, I have read most of this book, yes.

Q. Do you recall if you have read this paragraph ever before today?

A. Do I specifically recall? Probably I did read it. I have read this whole section.

Q. Were you aware that screening tests performed solely at schools, work sites, health fares and other community locations are generally outside the scope of this report?

MR. ROWLEY: Object to the form.

THE WITNESS: Well, I, again, don't know how they mean that in terms of how they formulated their opinion with regards to their recommendations in the scientific literature, so I'm not quite sure what they meant by this sentence.

BY MS. RITTER:

Q. So, in general, Dr. Spagnolo, you don't really understand the scope of this report or its application?

A. No, I understand the scope of the report. I'm specifically talking about that one sentence. There it is taken out of context. I'm not sure how to respond to your question.

Q. Do you have any information that leads you to believe that either the tests Dr. Burns described in his report or tests that the court might order would only be carried out by clinicians in the context of routine health care?

MR. ROWLEY: Object to the form, compound and vague.

THE WITNESS: Yes, I don't understand that question at all.

BY MS. RITTER:

Q. Do you understand that in this case the

Plaintiff is asking the court to set up a medical monitoring program?

A. I do.

Q. Do you understand that as part of that medical monitoring program, the Plaintiff is asking that certain tests or evaluations or medical tests be performed on class members who meet the criteria of the class definition and who come within the guidelines for receiving such testing?

A. Well, I understand what Dr. Burns is recommending, if that's what you are asking.

Q. Do you have any information that leads you to believe that the tests that Dr. Burns is recommending could only be carried out by clinicians in the context of routine health care?

MR. ROWLEY: Object to the form, vague.

THE WITNESS: I don't know how he -- I don't know exactly where he wants those tests to be carried out.

BY MS. RITTER:

Q. Are you aware, Dr. Spagnolo, that the court ultimately will be the one to determine what sort of medical monitoring would be provided to the class members, if any is to be provided?

A. I understand that's in the document called

Third Amended Complaint, that it would appear the court would make some decision.

Q. In your report, have you offered the court any guidance for the court to identify any type of monitoring for the smoking population?

MR. ROWLEY: Object to the form, vague and argumentative.

THE WITNESS: I'm not sure I understand your question. Again, have I already advised the court of something?

BY MS. RITTER:

Q. In your report, have you advised the court regarding any particular screening test?

A. Have I personally advised the court of anything? Is that what you are asking me?

Q. Yes.

A. Not to my knowledge.

Q. If given the opportunity to advise the court, in addition to the report that you have offered in this case, would you have any screening test that you would suggest for a smoking population in West Virginia --

MR. ROWLEY: Let me --

BY MS. RITTER:

Q. -- in order to screen for the presence of

smoking related diseases?

MR. ROWLEY: Let me object to the form, Ann. You need to specify what smoker you are talking about before you ask for an opinion about a smoker.

BY MS. RITTER:

Q. I'm asking about any smokers.

A. I would need to know -- I wouldn't make a blanket recommendation on anybody unless I knew who they were.

Q. So you could only make such a recommendation after having evaluated an individual?

A. Well, that's the best way to practice medicine.

Q. And so if the court decided that it wanted to put together some sort of a medical monitoring program for a population of persons who have a history of smoking, you have no input that you would offer the court concerning what sort of tests should be included in the program and for which groups of smokers the test should be offered; is that correct?

MR. ROWLEY: Object to the form, vague and triple compound.

Go ahead.

THE WITNESS: I would need -- I would be always happy to advise the court if they sought my

opinion but I would like to know ahead of time before I gave that opinion as to whom I was evaluating and what their circumstances were and what their histories were and what their potential diseases were. I mean I would need -- I'm not in the general habit of just making broad statements, so if the court asked me some question, I would want to know some information. So I can't make a blanket statement.

BY MS. RITTER:

Q. Would the information that you have just identified that you would need be as to individual smokers or would there be group-wide information that you could be provided?

MR. ROWLEY: Object to the form, vague.

THE WITNESS: Well, I'll try to answer that the best I can based on the question, which is a little vague, but I would want to try to know as much as I could about each individual person before I made such a recommendation. I think, otherwise, you are at risk of recommending something that could be harmful.

BY MS. RITTER:

Q. In your opinion, Dr. Spagnolo, does cigarette smoking cause disease?

A. Well, that's a little vague. I think certainly cigarette smoking has been implicated as a risk factor for certain diseases.

Q. You are unable to answer the question as posed, which was does cigarette smoking cause disease?

MR. ROWLEY: Let me object to your characterization of him not having answered the question and move to strike it.

BY MS. RITTER:

Q. I still have the question posed, though.

MR. ROWLEY: That's fine. We need the next question.

MS. RITTER: The question I just asked?

MR. ROWLEY: Could you rephrase or repeat it, please?

BY MS. RITTER:

Q. Are you able, Dr. Spagnolo, to answer the following question: Does cigarette smoking cause disease, yes or no?

MR. ROWLEY: Objection; asked and answered.

And, Doctor, you are never required to answer a question yes or no if the complete answer is something in addition to yes or no or other than yes

or no. You may answer subject to the objection.

MS. RITTER: Let me rephrase the question.

BY MS. RITTER:

Q. Dr. Spagnolo, are you able to answer the question, quote, "Does cigarette smoking cause disease, yes or no?" And for any answer you give, you are certainly entitled to provide me an explanation for your answer.

MR. ROWLEY: Same objection.

THE WITNESS: Well, I'll try to give you an answer to your question. Cigarette smoking is a major risk factor for disease. And that's as far as I can tell you. It is a significant risk factor for a variety of diseases and I think we all know that.

BY MS. RITTER:

Q. Is a person who has a history of smoking cigarettes at a significantly increased risk of contracting serious latent diseases above that of a person who does not have a history of smoking cigarettes?

MR. ROWLEY: Object to the form, vague. I would ask that you specify the person that you are speaking of.

If you can answer the question, go ahead.

THE WITNESS: Well, again, I keep coming

back to knowing. I need to know more. When you ask me these questions, I need to know about the patients. Smoking is a risk factor for certain diseases but in order for me to give you an answer, I have to know about the patient. I have to know a lot of things about that patient. So the most I can give you in that kind of a general question is that it is an increased -- it is a risk factor for certain diseases and I think we all know what those diseases are.

BY MS. RITTER:

Q. Can you diagnose chronic obstructive lung disease with a spirometer?

MR. ROWLEY: Object to the form.

THE WITNESS: Do you want to define "chronic obstructive lung disease"?

BY MS. RITTER:

Q. Why don't you give me a definition for it and then once you have given me the definition, I can ask you the question again?

A. Chronic obstructive lung disease is a diagnosis made by a clinician when he examines a patient based on the history and physical and can be supported by obtaining a pulmonary function study which may demonstrate various forms of airflow

obstruction. The diagnosis rests with the physician.

Q. Can you diagnose myocardial infarction with electrocardiogram?

MR. ROWLEY: Same objection.

THE WITNESS: Well, we are playing a little game here but I will be happy to answer. Diagnoses are made by doctors, they are not made by tests. You need to do a history; you need to do a physical; you need to perform appropriate laboratory studies. Electrocardiograms will simply reflect vectors of electrical energy recorded on a piece of paper which then need to be interpreted in the context of the patients, of the patient's history, the patient's complaints, the patient's symptoms, the patient's past medical history, and only then can you make a diagnosis. People think you make diagnoses from paper. You make diagnoses from having looked at patients.

BY MS. RITTER:

Q. Chronic obstructive lung disease, can it be a progressive condition?

A. Well, again, you need to define "chronic obstructive lung disease." And, again, I keep coming back to you tell me which disease it is, I'll tell you what I can tell you about that disease and I'll

tell you then after you tell me about the patient, whether or not it may or may not be progressive.

Q. Using your definition of "chronic obstructive lung disease," can that disease be progressive in any individual?

A. It depends on the type of chronic obstructive lung disease. Some chronic obstructive lung disease may not be progressive. Some may. Depends on a whole host of other factors that are going on within that individual patient. I can't --

MR. ROWLEY: Hold on. Ann. Ann. Ann.

THE WITNESS: If you would let me finish, I can't predict that without knowing all that other information.

BY MS. RITTER:

Q. Have you ever treated a patient who had progressive chronic obstructive lung disease?

MR. ROWLEY: Object to the form.

THE WITNESS: Well, again, I hate to quibble with you but if you give me what you mean by "chronic obstructive lung disease," I could tell you. There are patients who have some types of chronic obstructive disease which I have treated that have been progressive but you need to know about the patient.

BY MS. RITTER:

Q. If a patient is diagnosed early in the progression of chronic obstructive lung disease of a type which you have found in any patient to have been progressive, can you alter the subsequent course of the disease?

A. Depends on the disease, depends on the patient, depends on what was causing the chronic obstructive disease. There are too many factors involved for me to give you a general answer.

Q. Is there any type of chronic obstructive lung disease which if diagnosed early can be altered?

MR. ROWLEY: Object to the form, vague.

THE WITNESS: If you want to give me a disease, I can answer that. There probably are some diseases that we can perhaps intervene to either slow the course of the disease but you need to know, again, you have really got to know your patient, you have got to know what the obstructive lung disease is, you have got to know what the factors are, you have got to know what the role of other compounding factors are in that disease and I can't give you a specific answer.

BY MS. RITTER:

Q. Have you ever treated any patients who have

been diagnosed as having lung cancer?

A. Yes.

Q. Do you know of any instances where the existence of the lung cancer was first identified by an abnormal chest X-ray or the patients that you have described as having treated as having lung cancer?

A. May I ask you to rephrase that question?

Q. What part of the question do you not follow?

A. I didn't follow any of it.

Q. For the universe of patients that you, yourself, have treated for lung cancer, do you know of any individual for whom their lung cancer was initially diagnosed via an abnormal chest X-ray?

A. I think your question is poorly phrased because an X-ray doesn't make a diagnosis. I thought we went over that a minute ago. Tests don't make diagnoses, doctors do. Have I ever had a patient sent to me with an X-ray with an abnormality that eventually I made a diagnosis of lung cancer? The answer would be yes.

Q. I have the same question but for a CAT scan of the chest.

A. I have had patients sent to me with abnormalities or changes on a CAT scan for which we

eventually determined that the abnormality turned out to be a lung cancer.

Q. In your opinion, are cure rates for lung cancer different for different stages of diagnoses of that lung cancer?

MR. ROWLEY: Let me object to the form, vague, and I would ask you to specify the patient that you are talking about.

BY MS. RITTER:

Q. I'm not asking about a particular patient, Dr. Spagnolo, I'm talking in general. Can general cure rates for cancer be different for different stages of diagnoses?

MR. ROWLEY: Same objection. That's what makes the question objectionable.

You may answer if you are able to.

THE WITNESS: Well, let me try to do the best I can with such a vague question. We try to stage patients, which is one way of looking at and evaluating an individual patient. The ultimate prognosis, not only is perhaps determined by a clinical stage but it is also determined by a host of other factors that are involved in that patient, such as other compounding medical problems, so patients that may have exactly the same stage of disease may

have very much different survival rates and, you know, you get into trouble by trying to extrapolate groups with individual patients and that's why when we talk to patients in our office, we never try to give them an exact number about what their survival may be because there are too many other factors that relate to that individual patient. So you have got to be very, very careful.

BY MS. RITTER:

Q. Do you have any opinion as to whether or not the lower the stage of lung cancer at the time of diagnosis, the better the chance of survival?

MR. ROWLEY: Let me object as asked and answered. That's the same question rephrased, I believe.

But you may answer again.

THE WITNESS: If I understand you correctly, you are, basically, asking me what I just answered and I'll give you the same answer. You just don't want to make judgments in an individual patient without knowing that patient very, very well, even if the clinical stage may seem to be different than some other clinical stage. There is too many other compounding variables.

BY MS. RITTER:

Q. Do you know, Dr. Spagnolo, of any curative treatments for lung cancer?

MR. ROWLEY: Object to the form. Same objection.

THE WITNESS: Could you be more specific?

BY MS. RITTER:

Q. Do you know, Dr. Spagnolo, of any treatments which could potentially cure a case of lung cancer?

A. Again, I would like to come back to knowing more about that patient. There are patients who we sometimes think we cure them and we don't and the most common approach to the -- to curing a lung cancer at the moment, depending, again, on the individual and on the factors and whether or not they can tolerate it, would be surgery and that's a decision that we come to after a thorough evaluation of that patient, but it is the major current method that we use to attempt to remove tumors in the hopes that we can effect a cure.

Q. In your opinion, is the early detection of lung cancer -- let me rephrase that.

Dr. Spagnolo, in your opinion, can the early detection of lung cancer alter the outcome of that disease?

MR. ROWLEY: Let me raise the same objection as before and, in addition, I believe that question has been asked and answered and it is essentially the same question that was asked twice before with respect to staging.

However, subject to that objection, you may answer.

THE WITNESS: I think it is the same question. I'm going to try to come up with an answer that maybe will keep you from asking me another question. When we have attempted to do screening to detect early lung cancers, and I believe there are at least four very good, well-controlled prospective trials, looking at screening and looking at the -- with the hope that they could detect cancers by screening that would alter mortality, it was unfortunate that that did not occur so I guess that's the answer to your question, that currently that does not seem to work.

BY MS. RITTER:

Q. You just referred to four very good prospective trials that looked at screenings. Can you name those four for me?

A. Well, I'm sure I could name them. I think they are in that stack of material that we presented

to you. There is the Mayo Clinic study, the Johns-Hopkins study, the Memorial study, there was the Czechoslovakian study, there were previous studies done in the fifties and sixties that were perhaps not as comprehensive but at least those four were very well done, they were state-of-the-art science, prospective, randomized, very high level, widely accepted as definitive studies. I think those are the four that I was referring to.

Q. Now, when you first mentioned the four studies a moment ago, you said, "we had conducted," or something to that effect and I wondered if you actually had personally been involved in any of those prospective trials that you just listed for us.

A. If I said, "we," I certainly misspoke. I was speaking of the medical community at large. No, I was not involved.

Q. Have you read each of those studies?

A. Yes, I have read those.

Q. When you read them or at any time thereafter, did you have any criticisms of the methodology?

MR. ROWLEY: Let me object to the form as vague. That is an awfully broad question that relates to multiple studies and multiple aspects of

multiple studies.

THE WITNESS: I would need to -- I would have to go back and look at any of those. Those were excellent studies. I have no general criticisms of their results. Unless you had some very, very specific question, I can't think of any at the moment.

BY MS. RITTER:

Q. You provided in your reliance materials an article entitled, "A Randomized Study of Chest X-ray Screenings for Lung Cancer as part of the Prostate, Lung, Colorectal and Ovarian (TLCO) Trial," by authors Barnett Cramer, John Gulligan, Phillip Prorock, all of the National Cancer Institute, Division of Cancer Prevention and Control in Bethesda, Maryland. Are you familiar at all with that article?

MR. ROWLEY: Let me -- Ann, I'm sorry to nitpick but you characterized the stack that was produced to you as reliance materials. If you look at Adam Miller's cover letter, it states clearly that these are materials that Dr. Spagnolo had reviewed or critiqued and I hate to nitpick and I apoldgize for interrupting but I don't want that misinterpreted later on. Sorry for interrupting.

Go ahead and answer.

THE WITNESS: Actually, I forgot the question.

BY MS. RITTER:

Q. Are you familiar with this article by Cramer, Gulligan, Prorock of the National Cancer Institute describing the TLCO trials in the process of being conducted?

A. I remember the title and I remember that it -- I would have to have that in front of me to really look at every line so that I wouldn't want to be held to saying something that might not be absolutely accurate. I think they were describing an ongoing trial that, yet, has not been completed.

Q. Do you recall that before they actually began describing the trial, they explained the justification for actually conducting that trial?

A. I don't remember the specifics of that. I don't remember the specifics of their justification. They may have been asking a new scientific question. I don't remember.

Q. Do you recall that they stated in their article that early lung cancer screening trials in the 1950s and 1960s were for the most part uncontrolled and nonrandomized and, therefore, an

inadequate design to make a statement of benefit regarding screening?

MR. ROWLEY: Object to the form.

THE WITNESS: Well, I have already commented on that, I think, in a couple of those previous questions. I said to you that the -- some of the earlier trials before the Mayo Clinic trial and the Hopkins trial and the Memorial trial and the Czechoslovakian trial, there were some other articles done in the fifties and sixties -- one, I believe, was the Philadelphia trial and at the moment I'm slipping on the other one -- that were perhaps not as well designed to answer some of the questions that the Mayo Clinic trial and the Memorial trial and the Hopkins trial have answered in terms of mortality and so I think that may be, and I'm speculating because I don't know the intent of what those authors were saying, that may be what they were referring to.

BY MS. RITTER:

Q. Do you recall that those authors, who are doctors with the National Cancer Institute in Bethesda, Maryland, wrote concerning the Czechoslovakian study that interpretation of the study is difficult since there was no unscreened group and overall mortality over a fixed period of

time has not been reported? Do you recall that criticism of the Czechoslovakian study?

MR. ROWLEY: Objection; compound.

THE WITNESS: Well, you know, that's a judgment of those authors at the NIH. There are other people who felt that the conclusions of that trial were excellent and that it was a well-performed study that answered a lot of questions. The NIH people may have a different opinion. I thought the trial was a superbly done study and it's been quoted many times in the literature and reviewed.

BY MS. RITTER:

Q. Do you recall that regarding the Mayo lung project, which is one of the other trials that you referred to, that they stated that these results provide evidence of lead time bias and overdiagnosis which can make interpretation of trials without controls difficult. One problem in the Mayo lung project was contamination in the control group. Investigators estimated that about 50 percent of the subjects in the control group had chest X-rays outside of the study often because of pulmonary complaints common in smokers. Do you recall those authors with the National Cancer Institute leveling those criticisms regarding the Mayo lung project?

MR. ROWLEY: Same objection.

THE WITNESS: Well, let me tell you, I don't recall that and everybody can nitpick a study but everybody also agrees these are the best, most accurately, most thoroughly done studies in the literature and one can speculate they could have been maybe a little bit better done but there are no better studies and these are superbly conducted studies. These are theories -- some of this stuff is theories that these people are conjecting. I think if you look at the Guide to Preventive -- to Clinical Preventive Services, I think if you look at the recommendations of all of the major medical groups, they have looked at these studies in great detail and on the basis of these studies, they have recommended and concluded that screening for this by X-rays and sputums is not indicated.

BY MS. RITTER:

Q. Do you disagree with the criticisms that these National Cancer Institute doctors have leveled in their articles concerning the Mayo lung project?

A. I really think I have already answered that question. I think lots of people have disagreed with the conclusions and they have raised -- they are just speculating without any data.

Q. I wasn't asking about other people and I apologize if my question wasn't specific. I was asking whether you, Dr. Spagnolo, agreed with these National Cancer Institute doctors' criticisms.

MR. ROWLEY: Objection; asked and answered.

THE WITNESS: I have already given you an answer on that. I find the Mayo Clinic studies and the Hopkins studies and the Memorial studies very compelling, very well done, the best that we have available. They have been reviewed many times by many outside groups, including the American College of Physicians, American Cancer Society. I find no reason to take any of that data and question the validity of that study or those studies.

BY MS. RITTER:

Q. So, then, I take it you would disagree with the criticisms the same authors have leveled concerning the Memorial Sloan Kettering project and the Johns-Hopkins study that neither study compared a screened group to a nonscreened group?

MR. ROWLEY: Objection; compound, asked and answered, vague.

THE WITNESS: I don't know how to answer your question any better than I have already given it to you.

BY MS. RITTER:

Q. On page 5 of your report, Dr. Spagnolo, you talk about multiple risk factors. For example, at the bottom of the page you state, "Lung cancer is also associated with a number of risk factors in addition to smoking, including age, genetic predisposition." Do you see that part of your report?

A. Yes.

Q. Do you know whether there is scientific evidence to indicate that any of the risk factors you have listed on page 5 for lung cancer cancel out or eliminate the risk factor associated with smoking when those risks occur concurrently?

MR. ROWLEY: Object to the form, vague.

THE WITNESS: That's an interesting question. I don't know whether you can have a specific answer to that question. These are all legitimately scientifically accepted risk factors for the development of cancer, and beyond that, I don't think you can make a statement with any degree of medical certainty.

BY MS. RITTER:

Q. Do you agree, Dr. Spagnolo, that the relative risk for contracting lung cancer reaches

levels 20 times or more for a two-pack-per-day smoker as opposed to nonsmokers?

MR. ROWLEY: Ann, let me object to the form as vague and argumentative. You need to specify the study population in any question that relates to the calculation of a relative risk because it is population specific. Are you willing to rephrase?

MS. RITTER: You can ask your questions when I am done. I asked the question that I asked.

MR. ROWLEY: I'm asking you if you are willing to rephrase.

MS. RITTER: No, but if you would like, you can make note of some different question that you would like to ask about the various populations you were thinking of. I was asking a general question.

MR. ROWLEY: Okay. Object to the form as stated.

THE WITNESS: Would you like to repeat your question?

BY MS. RITTER:

Q. Do you agree or disagree that the relative risk for lung cancer reaches levels 20 times or more for two-packs-per-day smokers as opposed to nonsmokers?

MR. ROWLEY: Same objection.

THE WITNESS: Well, that's a really broad question, which is one that relates to population studies and there probably have been population studies that have looked at that relative risk and maybe even come up with a number that's that high. Some have come up with numbers that are much, much lower. But you can't take that kind of external population and with any degree of medical certainty apply it to an individual patient.

BY MS. RITTER:

Q. Do you agree or disagree that 80 percent of lung cancer occurs in smokers?

MR. ROWLEY: Same objection.

THE WITNESS: Well, I think I have kind of given you that answer that you do population studies and you can come up with these relative risk figures but you can't translate that into the individual so I can't tell an individual what his risk is. I need to know -- I need to know all those other things, his exposures to all these other things, genetics, so I think it is -- that's not a very wise thing to do.

Q. Do you make any use of the extensive population data concerning relative risk of lung cancer in smokers in any way in your practice of medicine?

A. Well, in what way? What are you asking me?

Q. In any way in your practice of medicine.

A. I use all the medical information at my disposal when I practice medicine. I'm not sure what your question is.

Q. If you look at the population of individuals who have contracted lung cancer, do you agree or disagree that 80 percent of that population are smokers?

MR. ROWLEY: Object to the form, asked and answered.

THE WITNESS: I just said that you can study different populations and come up with different numbers. Smoking is a risk factor for lung cancer. I thought I already answered that.

BY MS. RITTER:

Q. Do you agree or disagree that the incidence of lung cancer begins to climb rapidly at age 40 and increases dramatically between the ages 40 and 80?

MR. ROWLEY: Same objection; vague.

THE WITNESS: Well, I have seen lung cancers in young people and I have seen lung cancers in old people and there are, you know, many risk factors that we are all subjected to. There are

probably more people over the age of 50 that have been diagnosed with lung cancer than there are age 30.

BY MS. RITTER:

Q. Are you familiar with any data on populations of smokers and nonsmokers that indicate that the incidence of lung cancer begins to climb rapidly at age 40 and increases dramatically between ages 40 and 80?

MR. ROWLEY: Objection; asked and answered.

THE WITNESS: I would like to give you the same answer I gave you to the last question because it was the same question.

BY MS. RITTER:

Q. Are you aware that in the articles you have provided as having reviewed in this case that the conclusion that the incidence of lung cancer begins to climb rapidly at age 40 and increases dramatically between ages 40 and 80 has been stated by the author named Wolfcalf?

A. Well, again, I thought I answered that. There are -- I have seen and certainly read that data. We see lung cancer in people that are young and we see perhaps more lung cancer in people that are older but you need to know about those people.

You need to know what other risk factors there are.

Q. Have you reviewed any of the medical records of any of the individual class representatives in this case?

A. Yes.

Q. Which ones?

A. Well, I believe it was Ms. Blankenship and Ms. Sibo.

Q. As you sit here today, do you have an opinion as to whether or not either of those individuals are at an increased risk of contracting a smoking related disease over persons who did not smoke?

MR. ROWLEY: Object to the form.

THE WITNESS: Well, they are both smokers and I have said earlier that we know that smoking in general population studies is a factor that has a risk factor for cancer so there is a risk factor but they also have multiple other risk factors. As I read their depositions, they have multiple other risk factors.

BY MS. RITTER:

Q. In making your decision, which is reflected in your report in this case, effectiveness of screening for lung cancer and various forms of heart

disease, did you utilize any sort of probability tree or decision tree?

MR. ROWLEY: Object to the form of the question.

THE WITNESS: You would have to be a lot more specific.

BY MS. RITTER:

Q. Did you use any sort of a decision making model when you were making your determination?

MR. ROWLEY: Same objection.

THE WITNESS: What decision model are you alluding to?

BY MS. RITTER:

Q. Well, if you look at the article by Dr. Eddie that was in the materials you reviewed, you reviewed for this case, at page 10 through page 14, he discusses the various decisionmaking models, probability trees and decision trees that should be used when making policy decisions concerning whether or not screening for a particular disease is something that should be done. So that's the kind of analysis that I'm wondering whether you did.

A. I base my decisions on sound medical evidence that is very well quoted in the book called, "Guide to Clinical Preventive Services," where they

have looked at the best, most scientifically done studies in terms of that question. Theoretical notions, speculation, we can all do that. I prefer to base my opinions on science.

Q. In making your decision and basing it on science, did you consider the benefits, harms and costs of screening for lung cancer, lung disease and heart disease in smokers?

MR. ROWLEY: Objection; compound.

THE WITNESS: Well, you know, I go back to the same thing. I try to base all of my opinions on the best available science. You said something about risk? Did I hear that in your question?

BY MS. RITTER:

Q. No, I said benefits, harms and costs.

A. Harm, was that the word?

Q. Harm, benefits, harms and cost.

A. Well, addressing specifically the consideration of harm, if the best available medical science that we have indicates that screening offers no benefit and now you are attempting to screen millions of people, the likely outcome of that, since there is no evidence that you are going to do them any good, is that you could potentially do them a great deal of harm. The Institute of Medicine

recently came out with a very important report about the number of patients and individuals that die every year from medical interventions and mistakes and I am very concerned that if you embark upon a screen that has no scientific validity or indication, that what you may end up with are injuring, perhaps even fatally, many people in which you have never been able to demonstrate that they would benefit from such screening. To me, the unintended consequences of that are very serious.

Q. As a physician, Dr. Spagnolo, do you believe that the patients themselves should be the ones who make the comparisons of sort of the cost/benefit/harm analysis of whether a screening program would or would not be a good thing?

MR. ROWLEY: Object to the form, vague.

THE WITNESS: I was a little confused by your question. Who is going to make what decision?

BY MS. RITTER:

Q. It seems me, Dr. Spagnolo, that in your report you have gone through an analysis and relied on other materials where similar analysis has been made where what is being done is to compare the benefits, harms and costs of medical screening programs and once having completed the comparison,

decided whether or not such screening should go forward. So you have made sort of a kind of a cost benefit analysis which also includes in it the harm that you, yourself, have alluded to today, as well as in your report, as well as in the various materials that you have reviewed. I wondered if you, as a physician, believe that it is you or whether perhaps the patient who ought to make the comparison of those benefits, harms and costs in order to determine whether or not the screening program should go forward.

MR. ROWLEY: Ann, let me object to the form. He has just testified that there is no evidence of benefit. I think the question is both argumentative and vague in light of the answer that he just gave you.

Subject to that, if you can answer that question, go ahead.

THE WITNESS: First of all, I don't understand the question and so I can't possibly answer it and I think I have already given you an answer because there is no evidence that screening would be a benefit to these patients so why would you certainly want to -- why would you even encourage or suggest that they should do something that should be

dangerous to their health, in fact, maybe even kill them.

BY MS. RITTER:

Q. That's something that you think you should be allowed to decide as a retained expert of the tobacco companies in this case?

MR. ROWLEY: Object to the form, argumentative, and move to strike the question.

THE WITNESS: I'm attempting to respond to your questions to the best of my ability. There is no data. Every single organization has recommended against screening and you can read in their reports the reasons why they have made those strong recommendations, level one recommendations in many cases. And I can't answer that question any better than I have already done.

BY MS. RITTER:

Q. Dr. Spagnolo, that's not correct, is it? In fact, in the very book that you rely on, the report of the U.S. Preventive Services Task Force, they, in fact, themselves do report a recommendation for screening of at-risk populations, don't they?

A. Well, again, you want to give me the population they want to screen? Your question is very general. Are you talking about mammograms?

Q. No, actually I'm not. If you turn to page 8 and 9 of the report concerning asymptomatic coronary artery disease, and that's what we are talking about here is asymptomatic individuals, isn't it true that they indicate here --

MR. ROWLEY: Ann, can we wait until he gets to the page that you are referring to before we get the question? So you have referred to page 8 and 9. Can you direct him to the portion that the question is based on?

BY MS. RITTER:

Q. Isn't it true, Dr. Spagnolo, that at the bottom of page 8 in the report titled, "U.S. Preventive Services Task Force Report Guide to Clinical Preventive Services," that the authors report that the American College of Sports Medicine recommends exercise ECG testing for men over age 40, women over age 50 and other asymptomatic persons with multiple cardiac risk factors prior to beginning a vigorous exercise program? Isn't it true that they report that there?

A. Well, that sentence, you have read it correctly but you forgot to read all the other sentences which I think are just as important. If you are about to go run a marathon and you might --

they are, obviously, making that recommendation for somebody who is going to have vigorous exercise. The routine -- if you go back to the very first sentence, which is probably more important, the routine use of resting electrocardiogram to screen for coronary artery disease in asymptomatic adults is not recommended by the American College of Physicians or the Canadian Task Force or the periodic health examination. The recommendation by the American Academy of Family Physicians is for a baseline cardiogram for men over 40 and older with two or more risk factors about to begin a vigorous exercise program. So in that very, very, very limited context, but the general recommendation for asymptomatic adults is that nobody recommends an EKG for screening.

Q. Do you disagree with that limited recommendation that is set forth there on page 8?

A. Well, do I disagree with it? I have no other data at my fingertips to either agree or disagree with the American College of Sports Medicine and I would have to go back and see what they base that recommendation on.

Q. And at the top of page 9, doesn't the report also indicate that the ACC/AHA recognizes that

the exercise ECG is frequently used to screen asymptomatic persons in some high risk category, has concluded that there is a divergence of opinions with respect to its usefulness?

MR. ROWLEY: Objection.

BY MS. RITTER:

Q. Is that in the report there?

MR. ROWLEY: Object to the form.

A. Well, I will go on and read the next sentence. "The ACP does not recommend exercise testing with EKG as a routine screening procedure in asymptomatic adults."

Q. But we are talking about an at-risk group here, aren't we, Doctor?

MR. ROWLEY: Object to the form. Hold on. Object to the form. What do you mean by "here"?

BY MS. RITTER:

Q. In this case, are we or are we not, Dr. Spagnolo, talking about instead of an asymptomatic group of adults, we are talking about an asymptomatic group of at-risk adults, aren't we?

A. I don't know what they are defining in terms of what the word "at risk" means.

Q. Have you read this book, "The Guide to Clinical Preventive Services," before you did your

report?

A. I thought I already answered that.

MR. ROWLEY: Objection; asked and answered.

BY MS. RITTER:

Q. I don't think you answered it for this book. You said that you thought you had reviewed sort of most of the various materials and I would like to know specifically for this book have you read the book?

MR. ROWLEY: Asked and answered.

BY MS. RITTER:

Q. Dr. Spagnolo, you can still answer.

A. I have reviewed the book.

BY MS. RITTER:

Q. Is this a book that you have in your office?

A. I do.

Q. And how long have you had that book in your office?

A. Well, as I recall, they had a first edition and then they came out with the second edition so I can't remember how long I have had it there. It's been a long time.

Q. Are you familiar with the article by Gary Straus that was contained in the materials you have

reviewed in connection with this West Virginia case?

A. I have read that article.

Q. Are you aware that those authors note the MLSP, MSKLP and JHLP, all three, as supporting the conclusion that cure rates in lung cancer would more than double if population based periodic CXRs were carried out?

MR. ROWLEY: Object to the form.

THE WITNESS: I can't remember what all those initials stand for and I would have to go back and look at that.

BY MS. RITTER:

Q. Do you recall those authors concluding in summary and conclusion, "Annual CXR screening favorably influences age distribution, resectability, survival and fatality in lung cancer"?

A. That's a conclusion that Dr. Straus, I think, adheres to. The mortality in those groups was unchanged. When you look at the mortality of the study and the finding that maybe an individual survivor lived a little longer is no proof that screening was effective. That happens to be Dr. Straus' opinion.

Q. And you disagree with Dr. Straus?

A. Yes, I do.

Q. Have you ever conducted any studies like Dr. Straus has concerning screening for lung cancer?

MR. ROWLEY: Object to the form.

THE WITNESS: I don't know what studies you are talking about.

BY MS. RITTER:

Q. Have you ever conducted a single study related to the effectiveness of screening for lung cancer?

MR. ROWLEY: Objection; asked and answered.

THE WITNESS: No, because the evidence is that screening for lung cancer is not effective.

BY MS. RITTER:

Q. Doctor, are you still at George Washington?

A. I am.

Q. Do you know whether your own medical school disagrees with you concerning the value of MASS medical screenings absent individual physician involvement with each patient?

MR. ROWLEY: Objection; vague.

THE WITNESS: I don't know.

BY MS. RITTER:

Q. Are you familiar with a physician named Dr. Laura Welsch of the George Washington School of

Medicine?

A. I am and Dr. Welsch used to be in my department. She is no longer with us. She is working at the Washington Hospital Center. She may still carry a clinical title at G.W. but she no longer works for George Washington University.

Q. Are you aware that while she was in your department at your medical school at George Washington School of Medicine, Dr. Welsch designed and administered a massive medical screening program for asbestos exposed population screenings for lung cancer and asbestos lung disease using chest X-rays?

MR. ROWLEY: Object to the form.

THE WITNESS: She wasn't in my department, I think, when she carried out that study and I can't go into any details on that study but she was in another department at the time.

BY MS. RITTER:

Q. Are you certain of that?

A. She was in -- my department was the Division of Pulmonary Disease and Allergy. She was in the Division of Occupational Medicine.

Q. When was she in your department?

A. When she first came to G.W. back in -- many years ago. I don't remember the exact date.

Q. Are you aware of the SMWIA screening program that Dr. Welsch designed and administered while she was with George Washington Medical School?

MR. ROWLEY: Object to the form, asked and answered.

THE WITNESS: I gave you an answer. I told you I'm not aware of the details.

BY MS. RITTER:

Q. Were you aware that the study existed?

A. Not specifically. I think I might have heard of some study but I was not aware of it, no.

Q. Have you read the published articles concerning the results of that study?

A. No, I don't believe I have seen that.

Q. At the George Washington Medical Center, is it standard policy to not order medical tests if they are not covered by health insurance?

A. I have no idea.

Q. In your medical practice, does the patient's lack of insurance ever constrain your ability to order medical tests?

A. Well, I mean that's a difficult question to answer. I have ordered tests on people who don't have insurance and my assumption is they paid for the tests or someone else has paid for them.

Q. Do you actually see patients?

A. Every single day.

Q. Are the patients you typically see asymptomatic or symptomatic?

MR. ROWLEY: Object to the form.

THE WITNESS: That's a lovely question. I see all kinds of patients. I see patients in referral. I see patients that aren't referred. I see all kinds of patients.

BY MS. RITTER:

Q. What percentage of the patients you see are asymptomatic?

A. I have no idea.

Q. Does George Washington Medical School have any sort of a standard practice on medical tests that should be ordered in asymptomatic smokers?

A. I have no idea.

MS. RITTER: Just one second, please.

BY MS. RITTER:

Q. At page 3 of your report, towards the bottom of the first paragraph, you provide a list of organizations that do not recommend screening asymptomatic smokers and you include in that list the American Cancer Society. Is there a specific published recommendation that you are referring to

for that proposition?

A. Well, I would have to go back and look specifically but my recollection is that in the American Cancer Society most recent clinical oncology textbook, they recommend against screening and I certainly could get that reference for you.

Q. What I would like to get is the reference for that statement contained at that page of your report. And if it is that American Cancer Society textbook, which, by the way, in your review materials, there is such a text, an excerpt of such a textbook. I don't mean to suggest that is the one but there is one in there. I just would like to know which of many possible alternatives of publications you are relying on for that.

A. I'm sure that the American Cancer Society, that is their recommendation and I'm sure if it is not in -- I know it is in that textbook and I'm virtually certain it is in some of their other publications so I would have to dig those out for you.

Q. Are you familiar with the term "peer review" as it is used in the context of medical and scientific publications?

A. Yes, I am.

Q. What does that mean?

A. Well, as a general statement, it is that other people have reviewed your article or publication before it's gone into a journal.

Q. Why is it important to have that process of peer review?

A. Well, there is debate. Some people feel it is not that necessary but other people feel it is nice to have other people in the field look at your manuscript before you submit it for publication. Sometimes they can be helpful in making constructive suggestions.

Q. When you are looking at an article, does it have any significance to you to know that the article has, in fact, been peer reviewed?

MR. ROWLEY: Object to the form, vague.

THE WITNESS: It depends on what you are looking at it for. It may; it may not.

BY MS. RITTER:

Q. I was thinking of asking you about a couple of quotes by doctors in popular press, such as The Wall Street Journal or the New York times, and wondered before I ask you about statements of doctors in popular press whether, in general, you have any opinion on those sorts of quotes in popular press and

whether they are reliable for use in scientific evaluations.

MR. ROWLEY: Object to the form.

THE WITNESS: Well, I don't know if I want to have an opinion. That's -- I mean I don't know if I have an opinion on that issue. I would have to see. In general, I don't know if I have a specific opinion.

BY MS. RITTER:

Q. When you read quotes from doctors in the newspaper, do you take those quotes at face value as being reliable, as being the quote of that doctor?

MR. ROWLEY: Let me object to the form. Do you have a quote that you would like him to consider?

MS. RITTER: Well, I may. It just depends on what his general feel is about statements by doctors in newspapers.

MR. ROWLEY: Well, asked and answered. He said, I think, it depends on the quote. But that's asked and answered.

MS. RITTER: I don't think that he said it depends on the quote, in fact.

MR. ROWLEY: Well, the record will speak for itself. If he didn't say that -- hold on. My

objection is that it is asked and answered. You have asked that question. He has given an answer to the question. If you want to ask him about a quote, please do so. But he has already answered the question that's pending.

BY MS. RITTER:

Q. How much money do you get paid to consult for the cigarette industry?

MR. ROWLEY: Object to the form.

BY MS. RITTER:

Q. Dr. Spagnolo, I'm trying to get what your current rates are for the sort of consulting you do for the cigarette companies.

A. I consulted for this case here looking at medical monitoring and I have been charging $350 an hour and I have put in about 25 hours.

Q. Is this the first case you have ever consulted on for the cigarette companies?

A. Yes.

Q. Do you know how you came to be recruited as an expert for the cigarette companies in this case?

MR. ROWLEY: Object to the form, recruited.

You may answer.

THE WITNESS: Well, I'm not sure I know

what you mean by "recruited."

BY MS. RITTER:

Q. Well, somebody had to come up with your name and so I wondered if you have any knowledge -- or either you called them. I'm wondering how you came to be a consultant for the cigarette companies.

A. Well, I certainly didn't call them and since I am, I would assume, rather well-known around the world, maybe they just knew of me.

Q. Nobody ever mentioned to you where they got your name or the particular article or they saw you speak, that's never been mentioned to you?

A. It may have come from some other attorney that may have known them. That's probably my guess.

Q. Have you consulted with other attorneys on other litigation?

A. I have done a couple malpractice cases.

Q. What malpractice cases have you done?

A. Well, I don't remember at this movement. I only have done a couple. Nothing in the recent -- I don't think I have done anything for a few years. I have done one or two for the plaintiff and one or two, probably, for the defendant.

Q. What cases or what lawyers -- let's stick with just the lawyers since you don't really remember

the cases. Do you recall the names of the law firms of any of the lawyers that have been involved in any of the cases?

A. No, I do not.

Q. So your best guess is that some lawyer who you don't even remember for some cases a few years ago, less than probably four cases, is the one who gave your name to the cigarette company?

MR. ROWLEY: Let me object to the form.

THE WITNESS: I mean I don't know the answer specifically. It is my guess that they received my name or somebody mentioned my name. I'm fairly well-known and I suppose that's how they got me. And I was called and asked if I would be willing to look at some issues related to medical monitoring.

BY MS. RITTER:

Q. Have you ever designed a medical monitoring program of any sort?

A. No, not to my recollection.

Q. In the cases that you consulted on before this cigarette case, did you ever actually testify at trial?

A. Yes.

Q. Where was the trial?

A. One trial was in -- you know, I don't

remember whether it was Kansas City, Missouri or Kansas City, Kansas, it was so long ago. And one was in Virginia. It wasn't really a jury trial. It was a panel, a judge panel.

Q. Do you have any family in West Virginia?

A. Not that I am aware of.

Q. Dr. Spagnolo, do you have any family in West Virginia?

A. Not that I am aware of.

Q. Have you met with any attorneys in preparation for your deposition or in preparation of your report?

A. Yes.

Q. Which attorneys?

A. Well, I met yesterday with Carl.

Q. Prior to that, had you met with any attorneys in connection with this case?

A. Yes. I met with an attorney from Shook, Hardy & Bacon.

Q. Was Shook, Hardy & Bacon involved in any of the cases like the one where it was a trial in Kansas City?

A. No.

Q. Who did you meet with at Shook, Hardy & Bacon?

A. Mr. Frarie.

Q. Did you meet there at their offices in Kansas City?

A. No.

Q. Are you a cigarette smoker?

A. No.

Q. Were you ever a cigarette smoker?

A. No.

Q. The expert witness disclosure that was prepared in this case that has your name on it, was that typed by you or somebody in your office?

A. Was it typed by me? It was -- parts of it were typed by me but, no, most of it was finally typed by someone else.

Q. Was that somebody at one of the law firms?

A. Yes.

Q. Were they typing from a handwritten version that you had prepared?

A. Well, parts of it were -- parts of it were handwritten, parts of it were typed, parts of it were notes. It was a compilation of a bunch of stuff.

Q. Is this a report that you could fairly say was actually written sentence by sentence by you?

A. It was written predominantly by me.

Q. And for the portions that were not

predominantly written by you, who were those written by?

MR. ROWLEY: Let me object to the form and the question implies that somebody else wrote part of the report. I object to the question.

You may answer.

THE WITNESS: Yes, nobody wrote parts of the report. This was my writing and reviewing and talking and discussing and putting words into phrases, so the report is my report.

BY MS. RITTER:

Q. And before you signed the version that's been provided to me, which, by the way, does contain your signature, did you have an opportunity to review the report?

A. I certainly did.

Q. And other than the typographical errors that Counsel brought to our attention today at the beginning of the deposition, do you know of any other mistakes in the report?

MR. ROWLEY: Let me object to the form.

THE WITNESS: I'm not aware of any. I missed -- when I wrote that, I missed those -- I missed those two typos and, no, I'm not aware of any other mistakes.

BY MS. RITTER:

Q. Have you been a consultant to the Surgeon General's office on any of the Surgeon General reports on smoking and health?

A. Not to my knowledge.

MS. RITTER: That's all the questions I have.

MR. ROWLEY: Okay. Thank you. I have no questions. I take it that no one else on the line has questions?

MS. JANULIS: No questions, Carl.

MR. FLIEHMAN: No questions, Carl.

MR. ROWLEY: Okay. Very good.

MS. RITTER: Is he going to read and sign?

MR. ROWLEY: Yes, He is going to read and sign.

MS. RITTER: I would hope you all would provide, at least by way of letter, the ACS cite for that portion of the report we were referring to the ACS.

MR. ROWLEY: Well, Ann, I thought he answered that question.

MS. RITTER: Well, he said -- he is saying all of them, which I'm not sure is correct but if he says he was referring on all of them, that's fine.

Okay.

MR. ROWLEY: Well, I think the record will speak for itself as to what he said.

MS. RITTER: I do think he said he was going to try to find the one he meant but that's okay.

(Whereupon, at 11:40 a.m., the deposition was concluded.)

SAMUEL V. SPAGNOLO, M.D.

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EXHIBITS

(None marked)

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, **VICTORIA L. WILSON** , the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Victoria L. Wilson

Notary Public in and for the
District of Columbia

My Commission Expires **JANUARY 31, 2004**

SIGNATURE OF DEPONENT

I, the undersigned, SAMUEL V. SPAGNOLO, M.D., do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

SAMUEL V. SPAGNOLO, M.D. Date

A. WILLIAM ROBERTS, JR., & ASSOCIATES